HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1798 OF 2005.

Smt. Yamunabai Dattoba Taware,
Age 72 years, Occu: Household,
R/a: 716, Guruwar Peth,
Naikwada, Pune - 411 042. ..Petitioner.

Versus.

Nana Bhikoba Nagade,
Age 50 years, Service,
R/a 47/28, Taware Colony,
Opp. Rasik Medicals,
Aranyeshwar, Pune - 411 009. ..Respondent.

Shri. J. S. Kini for the petitioner.

Shri. Ashok Tajane for the respondent.

CORAM: S.B.MHASE,J.
DATE : AUGUST 7, 2006.

ORAL JUDGMENT.

1. Heard. Rule returnable forthwith with the consent of both side counsel.

2. This writ petition is directed as against the judgment and decree dated 26th November 2004 passed by the 9th Ad-hoc Additional District Judge, Pune in Civil Appeal No. 698 of 2003 wherein the Court has set aside the decree passed by the Small Causes Court, Pune in favour of the present petitioner in Civil Suit No. 91 of 1998.

Present petitioner is the original plaintiff from Civil Suit No. 91 of 1998 filed before the Small Causes Court, Pune. The respondent is the original defendant from the said suit. The petitioner had filed the said suit for getting possession of the suit premises consisting of one room admeasuring 10x12 feet in C.T.S. No. 3724, Taware Colony, Opposite Rasik Medicals, Aranyeshwar, Pune-9, which is located within the limits of Pune Municipal Corporation. Petitioner is landlord of the said premises while respondent is an admitted tenant of the said premises. The premises are governed under the Bombay Rent Act. Petitioner - landlord has claimed possession of the said premises from the respondent mainly on two grounds, namely, the respondent has made permanent additional alterations in the suit premises without the consent of landlord and, secondly, the possession of the suit premises is required reasonably and bonafide for the occupation of landlord. The Additional Judge of the small Causes Court, Pune, by order dated 10th October 2003 decreed the suit in favour of the petitioner- landlord holding that the petitioner - plaintiff has proved that the respondent - defendant has made permanent additional alternations in the suit premises

without the consent of the landlord. On a point of bonafide requirement, the Judge of Small Causes Court held that the petitioner - landlord requires possession of the said premises reasonably and bonafidely for his occupation. Even the point of hardship was decided in favour of the plaintiff. In short, both the contentions of the plaintiff were upheld and suit was decreed in favour of the petitioner - plaintiff.

3. Said decree was challenged by the respondent - tenant by filing Civil Appeal bearing No. 698 of 2003 in the District Court Pune, which was disposed of by the Ad-hoc Additional District Judge, Pune by his judgment dated 26.11.2004. The Additional District Judge allowed the appeal and set aside the decree passed in Civil Suit No. 91 of 1999. Therefore this petition.

4. The only ground which was considered by the Ad-hoc Additional District Judge is that during the pendency of the said suit, area where the suit premises are situated has been declared as a slum area under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and the writ which was filed by the petitioner has been

dismissed. Under these circumstances, in view of the provisions of Section 22 of the Maharashtra Slum Area Act, the landlord is prohibited from obtaining any decree or order for eviction of any occupier from any building or land without the previous permission in writing of the competent authority. Admittedly, in the present matter no such permission has been granted, therefore, the petitioner is not entitled to the possession of land.

5. The other issues involved in the matter, namely, the permanent alterations carried out by the respondent and the bonafide requirements of the landlord were absolutely not touched upon by the District Judge while giving reasons. Thus, under these circumstances, this Court is called upon to consider the validity and correctness of the order passed by the 9th Ad-hoc Additional District Judge, Pune.

6. It is admitted fact that the day on which the suit was filed the area where the suit premises was situated was not declared as "slum area" under the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971

and it was declared as "slum area" under the said Act during the pendency of the said suit. Provisions of section 22 are relevant for our purpose, and those are as under:

> "22. (1) Notwithstanding anything contained in any other law for the time being in force, **no person shall except with the previous permission in writing of the Competent Authority, -**
>
> (a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or
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> (b) when any decry or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any building or land in such area or for recovery of any arrears of rent or compensation from such occupier, or for both execute such decree or order; or
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> (c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV-A of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any occupier of a house or premises in a slum area."
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> Rest is not relevant for the decision of this matter, therefore, not reproduced.

. On a plain reading of clauses (a) and (b) of Section 22(1) of the said Act it will be revealed that section 22(1)(a) prohibits the institution of any suit or proceeding for obtaining any decree or order for eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both, except with the previous permission in writing of the competent authority. Section 22(1)(b) provides that no person shall except with the previous permission in writing of the competent authority when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any building or land in such area or for recovery of any arrears of rent or compensation from such occupier, or for both, execute such decree or order. Thus, by sub-section (1)(a) of section 22 the institution of the suit after the commencement of the said Act is prohibited. The premises come under the Act as a result of the declaration under section 4 of the said Act, and therefore, from the date of declaration, institution of suit is prohibited.

However, in the present matter, admittedly the suit was instituted when the Act was not applicable. Therefore, the suit as filed was competent and decree could have been passed in the said suit. The combined reading of sub-sections (1)(a) and (1)(b) of Section 22 of the said Act is that after the commencement of the Act the suit cannot be instituted. However, decrees which are passed prior to the commencement of the Act and the decrees which were obtained in suits which were pending on the date of commencement of this Act cannot be executed unless the previous permission in writing is obtained from the competent authority. Therefore, the decree which could have been passed in the present matter would not have been executed unless the permission in writing is obtained from the competent authority. It was an error on the part of the Appellate Court to hold under these circumstances that the suit cannot continue unless the permission from the competent authority is obtained. In fact, suits which were filed before the commencement of the Act can be decided and the decree can be passed by the Civil Court, but the said decree cannot be executed unless the permission is obtained from the competent authority. Therefore the reasoning

adopted by the District Judge is erroneous one.

7. However, even though writ petition is allowed on this point, yet there cannot be a decree in favour of the petitioner; because the District Judge has committed another great error while disposing of the appeal. It would be evident that the trial Court has passed decree of eviction as against the respondent on two grounds, namely, permanent alternations made in the premises by the tenant without the consent of the landlord, and, that the landlord requires the premises reasonably and bonafide for his personal occupation. Since it was an appeal and the decree was based on those two grounds, the Appellate Court was under the obligation to consider those grounds also. Order-XIV Rule-2 of the Code of Civil Procedure, 1908 requires the trial Court and Appellate Court to decide the matters and all issues involved in the suit, because the piecemeal trial of preliminary issue/s results into remand of the matters, as is being done in the present matter and ultimately it results into protraction of the trial. Therefore, it would be better that along with the decision on point -as to the application of section 22 of the Maharashtra Slum Areas Act,

1971, the District Judge could have also decided the questions involved in the main suit, namely, the issue regarding permanent alternations carried out by the respondents, and, regarding the bonafide requirements made out by the petitioner-landlord. In that eventuality, this Court could have been in position to dispose of the matter by passing a final decree. However, since the First Appellate Court preferred to dispose of the appeal on only one point, without touching to rest of the points which are required to be considered on evidence, there is no alternative, but to remand the matter for consideration of the First Appellate Court.

8. Therefore, order dated 26.11.2004 passed by the Ad-hoc Additional District Judge, Pune in Civil Appeal No. 698 of 2003 is hereby quashed and set aside. The District Judge, Pune is hereby directed to consider the points of permanent alterations carried out by tenant in the said premises without the consent of the landlord, and requirements of the landlord were bona fide and reasonable and thereafter to decide the matter. So far as the permission under section 22 of the Maharashtra Slum Areas (Improvements, Clearance & Redevelopment) Act, 1971 is concerned, it is made

clear that if there is a decree in favour of the petitioner, the said decree cannot be executed by the petitioner unless the petitioner obtains permission in writing under section 22 from the competent authority for its execution.

9. At this stage, it is also brought to the notice of this Court that the petitioner is a lady, aged 73 years and suit is pending since 1998. Since, the petitioner is a senior citizen, this matter requires to be given precedence over all other matters. Therefore, District Judge, Pune is directed to dispose of this appeal within a period of two months from the date of receipt of writ of this Court.

10. With these directions, petition is disposed of. Rule is made absolute.

(S.B.MHASE, J.)

:sac/2006/single.